

ARKANSAS COURT OF APPEALS  
NOT DESIGNATED FOR PUBLICATION  
BRIAN S. MILLER, JUDGE

DIVISION IV

CACR07-762

March 5, 2008

PORSCHEA RENEE JOYNER

APPELLANT

v.

STATE OF ARKANSAS

APPELLEE

AN APPEAL FROM THE PULASKI  
COUNTY CIRCUIT COURT  
[CR 2006-4177]

HONORABLE JOHN LANGSTON,  
JUDGE

AFFIRMED

Appellant Porschea Joyner was charged by felony information with aggravated assault; however, following a bench trial, she was found guilty of the lesser-included offense of first-degree assault. On appeal, Joyner challenges the sufficiency of the evidence supporting her conviction. We affirm.

A motion to dismiss at a bench trial and a motion for a directed verdict at a jury trial are challenges to the sufficiency of the evidence. *Russell v. State*, 367 Ark. 557, \_\_\_ S.W.3d \_\_\_ (2006). When a defendant challenges the sufficiency of the evidence that led to a conviction, the evidence is viewed in the light most favorable to the State. *White v. State*, 98 Ark. App. 366, \_\_\_ S.W.3d \_\_\_ (2007). Only evidence supporting the verdict will be considered. *Id.* The test for determining the sufficiency of the evidence is whether the

verdict is supported by substantial evidence, direct or circumstantial. *Graham v. State*, 365 Ark. 274, 229 S.W.3d 30 (2006). Evidence is substantial if it is of sufficient force and character to compel reasonable minds to reach a conclusion and pass beyond suspicion and conjecture. *Id.*

Joyner argues that, because the State failed to prove that she created a substantial risk of death or serious physical injury to another person, there was insufficient evidence supporting her conviction. Joyner's present argument, however, is not preserved for appellate review. This is true because she failed to address the lesser-included offense of first-degree assault in her motion to dismiss and because her argument on appeal is different from the argument she made at trial.

To preserve a challenge to the sufficiency of the evidence supporting a conviction for a lesser-included offense, the defendant must address the lesser-included offense either by name or by apprising the trial court of the elements of the lesser-included offense questioned by the motion to dismiss. *Grillot v. State*, 353 Ark. 294, 107 S.W.3d 136 (2003). Joyner's motion to dismiss failed to address the lesser-included offense of first-degree assault either by name or by apprising the court of the elements constituting the offense of first-degree assault. Therefore, she failed to preserve her present challenge to the sufficiency of the evidence supporting her first-degree assault conviction.

Second, Joyner's argument on appeal differs from the one she made below. On appeal, Joyner argues that the State failed to prove that she created a substantial risk of death or serious physical injury to another person. At trial, Joyner argued that the State failed to

show that she acted with extreme indifference to the value of human life. It is well settled that a party cannot change the grounds for an objection on appeal, but is bound on appeal by the scope and nature of the objections and arguments presented at trial. *Morris v. State*, 86 Ark. App. 78, 161 S.W.3d 314 (2004). We therefore affirm the ruling of the trial court.

Affirmed.

PITTMAN, C.J., and GLOVER, J., agree.